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February 28, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 22, 2007

Case Number: TSO-0535

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be granted.

I. Background

The individual is an applicant for a DOE security clearance. During an investigation into the individual's background, the Local Security Office (LSO) learned from credit reports that the individual had failed to reveal several of her delinquent accounts on her Questionnaire for National Security Positions (QNSP), and to the investigator from the Office of Personnel Management (OPM). Over a period of 14 months in 2005 and 2006, the LSO met with the individual twice, and issued her a Letter of Interrogatory, all in an effort to discern whether the individual's financial situation had improved. In 2006, the individual directed a friend to alter billing invoices in order to reflect lower balances on the individual's accounts than the actual balances. The individual then submitted these altered invoices to the LSO as evidence that she was satisfying her outstanding debts.

In July 2007, the LSO advised the individual in a Notification Letter that it possessed reliable information that created a substantial doubt regarding her eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO specifically enumerated the derogatory information at issue and stated that the information fell within the purview of two potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (f) and (l) (hereinafter referred to as Criteria F and L respectively).²

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

² Criterion F relates to information that a person "[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations by requesting an administrative review hearing. The Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. I subsequently convened a hearing within the time prescribed in the regulations. At the hearing, four witnesses testified. The LSO called two witnesses and the individual presented her own testimony and that of one additional witness. In addition to the testimonial evidence, the LSO submitted 10 exhibits into the record; the individual tendered none.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after

Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.30.” 10 C.F.R. § 710.8(f). Criterion L relates in relevant part to information that a person has “[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . .” 10 C.F.R. § 710.8(l).

consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. Findings of Fact

The individual has experienced considerable difficulty in managing her personal finances. The individual has been evicted twice for nonpayment of rent, has had her car repossessed, and has neglected to pay her bills to the point where she has multiple unpaid collection accounts. Exhibit (Ex.) 8 at 13-14, 33, 85, 92, 93.

When the individual applied for a DOE security clearance in July 2004, she completed a QNSP in which she revealed some, but not all, of her financial delinquencies. *See* Ex. 4. The delinquencies that she omitted from the 2004 security form included: (1) \$2,105 for past due rent on one apartment; (2) \$780 to Bank of America; (3) \$568 to a retail establishment; (4) \$231 to Sprint; (5) \$227 to Verizon; and (6) \$2,259 for past due rent on a second apartment. When the individual met with the investigator from the OPM in January 2005, she related that her "financial situation was in good standing." Ex. 8 at 95. The individual's credit report dated September 4, 2004, however, reflected eight collection accounts, ranging in dates from December 1998 to September 2002. Ex. 9.

During a Personnel Security Interview (PSI) in 2005 (2005 PSI), the individual stated that she would contact her creditors, would make arrangements to satisfy her delinquencies, and would then provide documentation to the DOE. Ex. 8 at 93. On nine occasions following the 2005 PSI, the LSO either contacted the individual or attempted to contact her to determine what, if any, efforts she had made to address her delinquent accounts.³ Hearing Transcript (Tr.) at 34-36. On April 29, 2005 and May 5, 2005, the individual again told the LSO that she had made payment arrangements on all her accounts, and would provide documentation to the LSO to show that she was making payments on those accounts. *Id.* at 34. When the LSO received no documentation, it contacted the individual on May 19, 2005. *Id.* This time the individual claimed that she would pay one of her past due accounts and would fax the documentation to the LSO the next day. *Id.* The individual failed to provide the requisite documentation to the LSO. The LSO extended the deadline twice more, ultimately setting a final date of May 5, 2006. *Id.* at 35. Five days after her final deadline, the individual faxed three financial documents to the LSO which appeared to have been altered. The LSO subsequently confirmed with the creditors that the documentation submitted by the individual was erroneous and this confirmation set the stage for a second PSI with the individual.

On June 20, 2006, the LSO conducted another interview with the individual (2006 PSI) during which she admitted that she had instructed one of her friends to alter the financial

³ The contacts or attempted contacts occurred on April 29, 2005, May 5, 2005, May 19, 2005, May 23, 2005, May 25, 2005, June 1, 2005, June 8, 2005, October 17, 2005, and April 28, 2006.

documents to reflect outstanding balances which were lower than the actual balances,⁴ and that she personally had faxed the falsified documents to the LSO. Ex. 5 at 72-89.

Prior to the hearing, the LSO obtained a new credit report on the individual. The new credit report dated November 13, 2007, revealed one new outstanding account for \$95, a new car loan in the amount of \$19,000, and a joint mortgage in amount of \$300,000. Ex.10.

IV. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).⁵ After due deliberation, I have determined that the individual's access authorization should not be granted. I cannot find that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Derogatory Information and Associated Security Concerns

As previously noted, the LSO cites two potentially disqualifying criteria as the bases for suspending the individual's security clearance, *i.e.*, Criteria F and L. With regard to Criterion F, the LSO provides the following information. First, it alleges that the individual deliberately failed to disclose all of her financial delinquencies on her QNSP. Second, it claims that the individual misled the OPM investigator regarding the state of her finances. Third, it contends that the individual misrepresented her intentions to the LSO when she repeatedly told them that she would make arrangements to satisfy her delinquencies. Fourth, it submits that the individual tendered falsified financial documents to the LSO in an effort to mitigate the financial concerns at issue. Fifth, it asserts that the individual initially lied to the LSO in the June 2006 PSI when the LSO first confronted her with the altered documents. In each of the examples cited above, the individual deliberately provided false or misleading information concerning relevant facts to an investigator and a security official. I find that the individual's failure to provide full, frank and truthful responses on her security form and in her two PSIs, as well as her submission of falsified documents to the LSO, raises questions about her reliability, trustworthiness and ability to protect classified information. *See* Guideline E (15) of the

⁴ One of the altered delinquent account statements showed a balance of \$14.53, when in actuality the balance was \$615.69. The second altered delinquent account statement showed a balance of \$9.16, when the correct balance was \$130.72. Finally, the third delinquent account statement showed a balance of \$231.78 with the notation that a payment of \$115.89 had been received, when in fact it had not. Ex. 5.

⁵ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines).

As for its reliance on Criterion L in this case, the LSO cites the individual's inability to manage her finances in a responsible manner, her failure to pay her outstanding debts in a timely manner, and her misrepresentations to the LSO about her intentions to satisfy her debts. I find that the individual's conduct in this regard may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all which call into question her reliability, trustworthiness and ability to protect classified information. *See Id.* at Guideline F of the Adjudicative Guidelines.

B. Mitigating Evidence

1. The Individual's Testimony

At the hearing, the individual explained in detail how she had accumulated the outstanding debt that is at issue in this proceeding. Tr. at 84-130. She admitted that, despite her best intentions, her current income does not allow her to reduce her outstanding debt by any significant amount. *Id.* at 123. She then related that she hopes she might be able to pay her debts and wipe the slate clean once she receives her tax refund. *Id.* at 143.

With regard to her omissions on the QNSP, she provided two explanations. First, she stated that she did not consult any documents before completing the security form. *Id.* at 132-133. Second, she stated that she decided not to disclose some of her debts because the debts did not total "thousands of dollars." *Id.* at 133. As for her statement to the OPM investigator that she was in good financial standing, she claimed that she believed that she was in good financial standing at the time. *Id.* She admitted, however, that she knew she had outstanding collection accounts with the Bank of America and a retail establishment when she met with the OPM investigator. *Id.* As for the alteration of the financial documents, she testified that she had directed her friend to alter the financial documents and that she had knowingly submitted those altered documents to the LSO. *Id.* She further testified: "I know it's too late to ask for forgiveness for basically altering, the deceiving, the lying about the documents." *Id.* 143. She added that at the time she engaged in the conduct, she "wasn't even thinking." *Id.* She concluded her testimony by stating that she knows she needs to cut expenses so she can pay off her debts and rebuild her credit. *Id.* at 144.

2. Former Supervisor's Testimony

The individual's former supervisor testified that she supervised the individual for a period of three years beginning in April 2004. *Id.* at 69. The former supervisor has a personal friendship with the individual outside of work. *Id.* at 70. It is the former supervisor's opinion that the individual does not live beyond her means, but that it is difficult for her financially to be raising four children as a single parent without much child support. *Id.* at 71, 77. The former supervisor related that the individual is reliable, trustworthy and a great employee. *Id.* at 74-75.

C. Hearing Officer Evaluation of Evidence

After carefully reviewing the documentary and testimonial evidence, I find that the individual has failed to present any probative evidence to mitigate the security concerns at issue in this case. Regarding the Criterion L concerns, I find that the individual's financial quagmire is even worse now than it was at the time that the Notification Letter was issued. Specifically, she has purchased a car and has payments on a \$19,000 automobile loan. In addition, she is now the joint owner of her parents' home and is legally responsible for a mortgage of \$300,000. Moreover, three of the individual's creditors have written off her debts,⁶ she has an outstanding medical bill in collection, and she might owe past-due rent on a third apartment. Tr. at 130.

In other administrative review cases involving documented cases of financial problems, Hearing Officers have held "that once a pattern of financial irresponsibility has been established, it is the individual's burden to demonstrate a new pattern of financial responsibility." See *Personnel Security Hearing* (Case No. TSO-0508), <http://www.oha.doe.gov/cases/security/tso0508.pdf>; *Personnel Security Hearing* (Case No. TSO-0288), <http://www.oha.doe.gov/cases/security/tso0288.pdf>; *Personnel Security Hearing* (TSO-0217), <http://www.oha.doe.gov/case/security/tso0217.pdf>. In this case, the individual's only plan to pay off her outstanding debt is to use her tax refund of an undetermined amount. First, I am not convinced that the individual will follow through on using her tax refund to eliminate her past due collection accounts in view of the numerous times in the past that she has reneged on her promises to the LSO to pay off her creditors. However, even if the individual were able to pay her past due collection accounts, she would still need a sustained period of paying her bills on a timely basis before I could consider her past pattern of financial irresponsibility to have been mitigated. For these reasons, I find that the individual has not mitigated the security concerns associated with Criterion L.

Regarding Criterion F, it is my assessment based on observing the individual's demeanor at the hearing that she neither appreciates nor understands the seriousness of her financial predicament and, for this reason, felt justified in telling the OPM investigator that she was in good financial standing. At the hearing, the individual provided no credible explanation to mitigate her deliberate concealment of her financial situation from the OPM investigator and LSO security officials. In addition, the individual's contrition for her actions in directing and submitting the altered financial documents is not sufficient to mitigate her actions under Criterion F. The individual deliberately set out to deceive the LSO when she provided the altered documents. She perpetuated this deception when she failed to acknowledge her actions several times during the 2006 PSI when confronted by the LSO with questions about mismatched typeset on the documents. Her actions in this regard directly impugned her honesty, reliability, and trustworthiness and negatively impacted her ability to hold a DOE security clearance.

⁶ Those debts were in the amounts of \$780.00, \$568.00, and \$231.00.

In sum, the individual has not met her burden of mitigating the security concerns at issue in this case. Accordingly, I find that her security clearance should not be granted.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F and L. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO. I therefore cannot find that granting the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: February 28, 2008